

CHAPTER NO. 287

SENATE BILL NO. 2091

By Henry

Substituted for: House Bill No. 2244

By McMillan, Maddox

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 5, Part 1, relative to support.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-5-101, is amended by deleting such section in its entirety and substituting instead the following:

Section 36-5-101.

(a)(1) Upon dissolution of a marriage, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

(2) Courts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of the children, in proper cases, by fixing some definite amount or amounts to be paid in monthly, semi-monthly, or weekly installments, or otherwise, as circumstances may warrant, and such awards, if not paid, may be enforced by any appropriate process of the court having jurisdiction thereof, including levy of execution.

(3) In interstate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of Parts 20 through 29 of this chapter. In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of Parts 30 and 31 of this chapter.

(4) As used in this chapter, "order," where the context requires, includes an order concerning child or medical support issued pursuant to an administrative proceeding in any other state.

(5) In establishing or enforcing any duty of support under this chapter, the court shall give full faith and credit to all paternity determinations of any other state or territory made pursuant to a voluntary acknowledgment or pursuant to any administrative or judicial process.

(6) A voluntary acknowledgment of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b) or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowledgment, shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(7) The State of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable in any case to compensate any person for repayment of child support paid or for any other costs as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment or the rescission of any orders of legitimation, paternity, or support.

(b)(1) Notwithstanding any other provision of law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services from the department or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children in order to have standing to petition for

child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(c)(1) The court shall set a specific amount which is due in each month to be paid in one (1) or more payments as the court directs. In making any decree or order pursuant to this section, the court shall consider the provisions of § 34-1-102(b). Unless the court finds otherwise, each order made under this section shall contain the current address of the parties.

(2)(A) The order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the court or directly to the spouse, or other person awarded the custody of the child or children; provided, however:

(i) That the court shall order that all child support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except, as set forth in subdivision (2)(A)(ii), for child support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116; and

(ii) That in all Title IV-D child support cases in which payment of child support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of Title 36, Chapter 6, Part 4, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services for child support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B)(i) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (c)(2)(B)(i)(a)-(B)(i)(c), the child's or children's:

- (a) Full name and any change in name;
- (b) Social security number and date and place of birth;
- (c) Residential and mailing addresses;
- (d) Home telephone numbers;
- (e) Driver license number;

(f) The name, address, and telephone number of the person's employer;

(g) The availability and cost of health insurance for the child;
and

(h) Gross annual income.

The requirements of this subdivision may be included in the court's order.

(ii) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (c)(2)(B)(i) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection, procedures for complying with the subsection and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(iii) In any subsequent child support enforcement action, the delivery of written notice as required by Tennessee Rule of Civil Procedure 5 to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in (c)(2)(B)(i) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(iv) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victim or victims or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

(d)(1) All support payments which have been paid to the clerk of the court shall be distributed by the clerk as provided in the order of the court within ten (10) days; provided, that the payments made to the clerk of the court in Title IV-D child support cases shall be distributed and deposited pursuant to the operating agreements under subdivision (d)(3) and the provisions of subdivision (d)(6) after implementation of the statewide Title IV-D child support computer system in the clerk's county, and after the appropriate notice to the clerk by the department under these subdivisions.

(2) In every child support case being processed through the state's central collection and disbursement unit, if unable to provide the information concerning an order through a computer information transfer, the clerk shall send a copy of any new order or modification of such order, prior to or along with the first payment received pursuant to such order to the department or its designee within ten (10) working days.

(3) Clerks participating in the operation of the statewide Title IV-D child support computer system shall be bound by the terms of the agreement and the laws, regulations, and the policies and procedures of the Title IV-D child support program for the term of the agreement, unless the agreement is canceled by the department after notice to the clerk and an opportunity to correct any deficiencies caused by failure of the clerk to comply with federal or state regulations or procedures for operation of the system within thirty (30) days of such notice. While participating in the system, the clerks shall be entitled to receive the statutory fee for the collection and handling of child support obligations under the Title IV-D program. Any child support payment subject to distribution through the state's central collection and disbursement unit which has been received by a clerk shall be sent immediately by the clerk to the department or its designee, without the necessity of a court order.

(4) The clerks of all courts involved in the collection of any child support shall cooperate with and provide any reasonable and necessary assistance to the department or its contractors in the transfer of data concerning child support to the statewide Title IV-D child support computer system.

(5) Whenever the clerk has ceased handling Title IV-D child support payments under the provisions of subdivision (d)(3), and only where the context requires, all provisions in this chapter relating to the duties or actions involving the clerk shall be interpreted to substitute the department or its contractor.

(6) In all cases in which child support payments are subject to processing through the state's central collection and disbursement unit, the clerks shall, upon notice by the department, deposit all receipts of such child support payments on a daily basis to a bank account from which the State of Tennessee will electronically debit those payments for the purpose of obtaining funds to distribute the child support obligations to the obligee.

(7) In all Title IV-D child support cases, child support payments shall be made by the obligor to the department. No credit shall be given to an obligor for any payments made by the obligor or by another person on behalf of the obligor, directly to an obligee or the obligor's child or children unless the obligee remits the payment to the department. In the event that a Title IV-D case is instituted subsequent to the establishment of an order of child support, the department will notify the obligor and obligee and the appropriate clerk of this fact, and all payments of child support in Title IV-D cases shall be made by the obligor to the department without further order of the court.

(8) When an order provides for the support of two (2) or more children in a case which is subject to enforcement under Title IV-D, and at least one (1) child is a public charge based upon receipt of temporary assistance pursuant to Title 71, Chapter 3, Part 1, TennCare-Medicaid, or foster care or other custodial services from the State of Tennessee, the child support order shall be prorated by the department for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child without the need for modification of the child support order by the court.

(e)(1)(A) In making its determination concerning the amount of support of any minor child or children of the parties, the court shall apply as a rebuttable presumption the child support guidelines as provided in this subsection. If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case, in order to provide for the best interest of the child(ren) or the equity between the parties. Findings that the application of the guidelines would be unjust or inappropriate shall state the amount of support that would have been ordered under the child support guidelines and a justification for the variance from the guidelines.

(B) Notwithstanding any provision of this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars (\$10,000) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount provided for in the child support guidelines is reasonably necessary to provide for the needs of the minor child or children of the parties. In making its determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties.

(C) When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive

support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The abandoning spouse has a reasonable apprehension of harm from the remaining spouse or those acting on the remaining spouse's behalf toward the abandoning spouse or the child; or

(iv) The remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the separation or divorce of the parties, had a deviation not been made by the court.

(G) Nothing in this subdivision (e)(1) shall limit the right of the State of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the State of Tennessee pursuant to § 71-3-124 shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(2) Beginning October 13, 1989, the child support guidelines promulgated by the department pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, shall be the guidelines that courts shall apply as a rebuttable presumption in child support cases.

(3) Child support guidelines shall be reviewed at least every four (4) years from the date of promulgation and revised, if necessary, to ensure that the application of the guidelines results in the determination of appropriate child support award amounts.

(4)(A) In addition to any other subtractions, calculations of net income under the guidelines shall take into consideration the support of any other children the obligor is legally responsible to provide. The court shall consider children of the obligor who are not included in a decree of child support, but for whom the obligor is legally responsible to provide support and is supporting for the purposes of reducing the obligor's net income, in calculating the guideline amount, or as a reason for deviation from the guidelines.

(B) In calculating amounts of support for children under the guidelines, the court shall allocate an obligor's financial child support responsibility from the obligor's income among all children of the obligor for whom the obligor is legally responsible to provide support and is supporting, in a manner that gives equitable consideration as defined by the department's child support guidelines, to the children for whom support is being set in the case before the court and to any other children for whom the obligor is legally responsible and is supporting. The court shall require that payments made out of that allocation for all children of the obligor for whom the obligor is legally responsible and is supporting, be made upon such consideration. Guidelines promulgated by the department shall be consistent with the provisions of this subdivision.

(f)(1) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date upon which the ordered support is due, the unpaid amount is in arrears and shall become a judgment for the unpaid amounts and shall accrue interest from the date of the arrearage at the rate of twelve percent (12%) per annum. All interest which accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(2) In addition to the remedies provided in Part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of not less than two hundred fifty dollars (\$250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may at any time require an obligor parent to give security by bond with sufficient sureties approved by the court or alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds therefrom paid to the court clerk and applied to the order of support.

(3) Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exist at the time an order for child support would otherwise terminate, the order of support or any then existing income withholding arrangement and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement until the arrearage and costs due are satisfied and the court may enforce all orders for such arrearages by contempt.

(4) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use by the department of human services or its contractors in the Title IV-D child support program of any other administrative means of collecting the remaining balance of the outstanding arrearage including, but not limited to, income tax refund intercepts, financial institution collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure which is used to reduce the arrearage.

(5)(A) In enforcing any provision of child support, if an obligee, or the department or its contractor in Title IV-D cases, specifically prays for revocation of a license because an obligor is alleged to be in noncompliance with an order of support, or if the court determines on its own motion or on motion of a party that any individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may find specifically in its order that the obligor is not in compliance with an order of support as defined by Part 7 of this chapter, or it may find that an individual party has failed to comply with a subpoena or warrant in connection with the establishment or enforcement of an order of support, and may direct that any or all of the obligor's or individual party's licenses be subject to revocation, denial or suspension by the appropriate licensing authority pursuant to Part 7 of this chapter. The court shall direct the clerk to send a copy of that order to the department of human services to be sent by the department to each licensing authority specified in the order for processing and suspension, denial or revocation pursuant to § 36-5-706 and any other applicable provisions of Part 7 of this chapter. Costs related to such order shall be taxed to the obligor or individual party.

(B) If the obligor whose license has been subject to the provisions of subdivision (f)(5)(A) complies with the order of support, or if the individual party complies with the subpoena or warrant, the court shall enter an order making such a finding and the clerk shall send an order immediately to the department of

human services to be transmitted to each licensing authority specified in the order which shall then immediately issue, renew or reinstate the obligor's or individual party's license in accordance with the provisions of § 36-5-707. Costs related to such order shall be taxed to the obligor or individual party as the case may be and shall be paid by the obligor or the individual party prior to sending the order to the department for transmission to the licensing authority.

(C) The department shall provide available information to the obligee or party or the court in actions under this subsection concerning the name and address of the licensing authority or authorities of the obligor or individual party in order to enable the enforcement of the provisions of this subsection. The obligee or individual party, as the case may be, seeking such information shall pay a fee as established by the department for the provision of such service. These fees may be taxed as costs to the obligor whose license has been revoked pursuant to this subsection or to the individual party who has failed to comply with the warrant or subpoena.

(D) If the licensing authority fails to take appropriate action pursuant to the orders of the court under this subsection, the party may seek a further order from the court to direct the licensing authority to take such action and the party may seek any appropriate court sanctions against the licensing authority.

(E) For purposes of this subsection, "individual party" means a party to the support action who is a person, but does not include a governmental agency or the contractor or agent of such governmental agency which is enforcing an order of support. "Party" may include, where the context requires, an individual person or it may include a governmental agency or contractor or agent of such governmental agency.

(g)(1) Upon application of either party, the court shall decree an increase or decrease of support when there is found to be a significant variance, as defined in the child support guidelines established by subsection (e), between the guidelines and the amount of support currently ordered unless the variance has resulted from a previously court-ordered deviation from the guidelines and the circumstances which caused the deviation have not changed. Any support order subject to enforcement under Title IV-D may be modified in accordance with § 36-5-103(f).

(2) The necessity to provide for the child's health care needs shall also be a basis for modification of the amount of the order, regardless of whether a modification in the amount of child support is necessary.

(3) The court shall not refuse to consider a modification of a prior order and decree as it relates to future payments of child support because the party is in arrears under that order and decree, unless the arrearage is a result of intentional action by the party.

(4)(A) Notwithstanding the provisions of subdivision (B) and § 36-5-103(f), for the purposes of this chapter, the birth or adoption of another child for whom an obligor is legally responsible to support and is supporting shall constitute a substantial and material change of circumstances for seeking a review of the existing order to determine if the addition of such child, and any credits applicable for the addition of such child under the department's child support guidelines, would result in a significant variance under such guidelines. If the significant variance is demonstrated by the review, the amount of an existing child support order may be modified by the court.

(B) For purposes of this chapter, the significant variance established by the department of human services pursuant to the child support guidelines shall provide a lower threshold for modification of child support orders for persons whose adjusted gross incomes are within low income categories established by the department's child support guidelines. The significant variance involving low income persons shall be established by rule of the department at no more than seven-and-one-half percent (7 1/2%) of the difference between the current child support order and the amount of the proposed child support order.

(5)(A) In Title IV-D child support cases the department of human services is enforcing, the department shall provide a child support obligor notice ninety (90) days prior to the eighteenth birthday of a child or children for whom the obligor is paying child support, as such birthday is indicated by the department's records.

(B) If the following conditions are met, then the obligor may seek termination of the order of support and may also request that the department, as required by federal law, assist in seeking termination of the order:

(i) The department's records demonstrate that the child for whom an order of support in a Title IV-D child support case has been entered has reached eighteen (18) years of age and has graduated from high school, or that the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school, the obligor has otherwise provided the department with written documentation of such facts, or the obligor has provided the department with written documentation that a child for whom the obligor is required to pay support has died or has married; and

(ii) No other special circumstances exist including, but not limited to, the circumstances provided for in subsection (k) regarding disabled children, that require the obligation to continue;

(iii) The obligor does not owe arrearages to the obligee parent, any guardian or custodian of the child, the department of human services, any other agency of the State of Tennessee, or any other Title IV-D agency of any state;

(iv) The costs of court have been paid; and

(v) There are no other children for whom the obligor is required to pay child support.

(C)(i) If the conditions of subdivisions (g)(5)(B)(i)-(v) exist in the Title IV-D case as shown by the department's records, or such conditions exist based upon the written documentation provided by the obligor and verified by the department, then the department shall immediately suspend the order of support temporarily for the child who has reached majority. If the existing court order was the result of a deviation from the child support guidelines, the department immediately shall seek from the court termination of the support order for such child, and shall provide the obligee with notice of the filing of the petition to terminate such order.

(ii) If the existing order was not the result of a deviation from the child support guidelines, the department shall give notice to the obligee and to the other obligor of the temporary suspension of the order based upon verification of the status of the case pursuant to subdivision (g)(5)(B), of its intent to permanently terminate the support order by an administrative order, which the department may issue for such purpose, and of the opportunity for a hearing upon the issue of permanent termination of the order.

(iii) If the obligee contests the temporary suspension of the order of support under the circumstances of subdivisions (g)(5)(B)(i)-(v) and prevails following entry of the court or administrative order, the obligor shall pay the support amounts and any other arrearages or court costs not paid as a result of the temporary suspension of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(D)(i) If the conditions of subdivisions (g)(5)(B)(i)-(iv) are met in the Title IV-D case, but there are other children for whom the obligor is still obligated to support, the department shall immediately conduct a review of the support order and shall seek its adjustment if appropriate under the child support guidelines for such children. The obligor shall continue to make child support payments in accordance with the existing order until the court or department modifies the order pursuant to this subdivision (g)(5)(D).

(ii) If the existing court order was the result of a deviation from the child support guidelines, the department shall seek modification of the support order from the court, and shall provide the

obligee and the obligor with notice of the filing of the petition to modify such order.

(iii) If the existing order was not the result of a deviation from the child support guidelines, and the department reviews the order and determines that the order should be modified pursuant to such guidelines, then the department shall notify the parties of its intent to modify the support order by an administrative order, which the department may issue for such purpose, and shall notify the parties of the opportunity for a hearing upon the issue of modification of the order.

(iv) The support order shall be modified as established by order of the court or the department as required pursuant to the child support guidelines. If the modified payment amount is lower than the payment amount required prior to the modification, then the obligor shall be given credit for such amount against future payments of support for the remaining children under the order. If the modified payment amount is higher than the payment amount required prior to the modification, then the obligor shall pay the higher ordered amount from the date of entry of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(E) The department's review and adjustment process and the administrative hearing process outlined in this subdivision (g)(5) shall comply with any other due process requirements for notice to the obligor and obligee as may otherwise be required by this chapter.

(h)(1) The court may direct the acquisition or maintenance of health insurance covering each child of the marriage and may order either party to pay all, or each party to pay a pro rata share of, the health care costs not paid by insurance proceeds. In no event shall eligibility for or receipt of Medicaid or TennCare-Medicaid by the custodial parent be considered to meet the need to provide for the child's health care needs in the order if reasonable and affordable health insurance is available.

(2) In any case in which the court enters an order of support in a case enforced under Title IV-D of the Social Security Act, the court shall enter an order providing for health care coverage to be provided for the child or children.

(3) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(i) The court may direct either or both parties to designate the children as beneficiaries under any existing policies insuring the life of either party and maintenance of existing policies insuring the life of either party, or the purchase and maintenance of life insurance and designation of beneficiaries.

(j) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to child support. In any such agreement, the parties must affirmatively acknowledge that no action by the parties will be effective to reduce child support after the due date of each payment, and that they understand that court approval must be obtained before child support can be reduced, unless such payments are automatically reduced or terminated under the terms of the agreement.

(k)(1) Except as provided in subdivision (k)(2), the court may continue child support beyond a child's minority for the benefit of a child who is handicapped or disabled, as defined by the Americans with Disabilities Act, until such child reaches twenty-one (21) years of age.

(2) Provided, that such age limitation shall not apply if such child is severely disabled and living under the care and supervision of a parent and the court determines that it is in the child's best interest to remain under such care and supervision and the obligor is financially able to continue to pay child support. In such cases, the court may require the obligor to continue to pay child support for such period as it deems in the best interest of the child.

(3) In so doing, the court may use the child support guidelines.

(l)(1) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any

sums necessary to enable the other spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. In making any order under this subsection, the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(2) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the department of human services or to the department's Title IV-D contractor or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D contractor or against any applicant for child support services. The court shall not award attorneys fees against the department, the Title IV-D contractor or against any applicant for child support services unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct. This provision is not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues such as custody or visitation.

(m) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage which provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree, or which names another person as the father of such child shall be given preclusive effect unless scientific tests to determine parentage are first performed and the results of the test which exclude the husband from parentage of the child or children or which establish paternity in another person are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 5, Part 1, is amended by adding the following as a new section thereto:

§ 36-5-121.

(a) In any action for divorce, legal separation or separate maintenance, the court may award alimony to be paid by one spouse to or for the benefit of the other, or out of either spouse's property, according to the nature of the case and the circumstances of the parties. The court may fix some definite amount or amounts to be paid in monthly, semi-monthly or weekly installments, or otherwise, as the circumstances may warrant. Such award, if not paid, may be enforced by any appropriate process of the court having jurisdiction thereof, including levy of execution. Further, the order or decree shall remain in the court's jurisdiction and control, and, upon application of either party, the court may award an increase or decrease or other modification of the award based upon a showing of a substantial and material change of circumstances, provided the award is subject to modification by the court based on the type of alimony awarded, the terms of the court's decree or the terms of the parties' agreement.

(b) The court may, in its discretion, at any time pending the final hearing, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary for the support and maintenance of the other spouse, to enable such spouse, to prosecute or defend the suit of the parties and to make other orders as it deems appropriate. Further, the court may award such sum as may be necessary to enable a spouse to pay the expenses of job training and education. In making any order under this subsection, the court shall consider the financial needs of each spouse and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(c) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of

living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(d) The court may award rehabilitative alimony, alimony in futuro (periodic), transitional alimony, or alimony in solido (lump sum), or a combination thereof, as provided in this subsection.

It is the intent of the general assembly that a spouse, who is economically disadvantaged relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

Where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in subsection (i), the court may grant an order for payment of support and maintenance on a long-term basis or until death or remarriage of the recipient except as otherwise provided in subdivision (f)(2)(B).

An award of alimony in futuro may be made either in addition to an award of rehabilitative alimony, where a spouse may be only partially rehabilitated, or instead of an award of rehabilitative alimony, where rehabilitation is not feasible. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees where appropriate.

(e)(1) Rehabilitative alimony is a separate class of spousal support as distinguished from alimony in solido, alimony in futuro, and transitional alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2) An award of rehabilitative alimony shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances. For rehabilitative alimony to be extended beyond the term initially established by the court, or to be increased in amount, or both, the recipient of the rehabilitative alimony shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(3) Rehabilitative alimony shall terminate upon the death of the recipient. Rehabilitative alimony shall also terminate upon the death of the payor unless otherwise specifically stated.

(f)(1) Alimony in futuro, also known as periodic alimony, is a payment of support and maintenance on a long term basis or until death or remarriage of the recipient. Such alimony may be awarded when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2)(A) An award of alimony in futuro shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances.

(B) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is thereby raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded, and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient therefore does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

(3) An award for alimony in futuro shall terminate automatically and unconditionally upon the death or remarriage of the recipient. The recipient shall notify the obligor immediately upon the recipient's remarriage. Failure of the recipient to timely give notice of the remarriage will allow the obligor to recover all amounts paid as alimony in futuro to the recipient after the recipient's marriage. Alimony in futuro shall also terminate upon the death of the payor unless otherwise specifically stated.

(g)(1) Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(2) Transitional alimony shall be nonmodifiable unless:

(A) The parties otherwise agree in an agreement incorporated into the initial decree of divorce, or legal separation or order of protection;

(B) The court otherwise orders in the initial decree of divorce, legal separation or order of protection; or

(C) The alimony recipient lives with a third person, in which case a rebuttable presumption is thereby raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded, and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient therefore does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

(3) Transitional alimony shall terminate upon the death of the recipient. Transitional alimony shall also terminate upon the death of the payor, unless otherwise specifically stated in the decree.

The court may provide, at the time of entry of the order to pay transitional alimony, that the transitional alimony shall terminate upon the occurrence of other conditions such as, but not limited to, the remarriage of the party receiving transitional alimony.

(h)(1) Alimony in solido, also known as lump sum alimony, is a form of long term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments provided the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse. In addition, alimony in solido may include attorney fees where appropriate.

(2) A final award of alimony in solido is not modifiable, except by agreement of the parties only.

(3) Alimony in solido is not terminable upon the death or remarriage of the recipient or the payor.

(i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(1) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;

(2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;

(3) The duration of the marriage;

(4) The age and mental condition of each party;

(5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(6) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

(j) The court may direct a party to pay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate.

(k) To secure the obligation of one party to pay alimony to or for the benefit of the other party, the court may direct a party to designate the other party as the beneficiary of, and to pay the premiums required to maintain, any existing policies insuring the life of a party, or to purchase and pay the premiums required to maintain such new or additional life insurance designating the other party the beneficiary thereof, or a combination thereof, as the court deems appropriate.

(l) The order or decree of the court may provide that the payments for the support of such spouse shall be paid either to the clerk of the court or directly to the spouse, or in Title IV-D cases the order or decree of the court shall provide that payments shall be paid to the central collections and disbursement unit pursuant to § 36-5-116.

(m) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to support and maintenance of a party.

(n) Any order of alimony that has been reduced to judgment shall be entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state.


SECTION 3. Tennessee Code Annotated, Section 36-5-102(a), is amended by deleting the language "§ 36-5-101" and substituting instead the language "§ 36-5-101 and § 36-5-121".

SECTION 4. Tennessee Code Annotated, Section 36-5-105(a), is amended by deleting the language "§ 36-5-101" and substituting instead the language "§ 36-5-121".

SECTION 5. This act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: May 16, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 1st day of June 2005


PHIL BREDESEN, GOVERNOR